

ADVISORY OPINION

Code of Judicial Conduct Canon 3

#2-07

A party in a case delayed by the judge may, under Indiana Trial Rules 53.1 and 53.2, file a praecipe representing that the judge has not set a motion for hearing within 30 days, has not ruled on a motion within 30 days if a hearing is not required, or has not ruled for over 90 days on an issue taken under advisement. The rules require the Clerk of the court to determine whether a delay has occurred and, if so, to give written notice to the judge and to the Supreme Court that the case has been withdrawn from the judge, after which the Supreme Court appoints a special judge to assume jurisdiction.

The Commission occasionally reviews complaints against judges alleging that they, rather than the Clerks, have ruled on Trial Rule 53 motions or have, upon the filing of Rule 53 praecipes in which delays have occurred, set the delayed hearings or ruled on the delayed motions. These complaints often raise valid concerns that the judges have violated Canons 1 and 3B(2) of the Code of Judicial Conduct, which require judges to respect and comply with the law.

The Commission advises judges and Clerks that Rules 53.1 and 53.2 require the Clerk, and not the court, to assess motions alleging delays and seeking withdrawal from the court. If the Clerk determines that withdrawal of a case is required, the withdrawal is effective as of the time the praecipe is filed. Ind. Trial Rule 53.1(e)(2). Judges should not interfere with this process, although they and their staff should assist the Clerk, if necessary, in the Clerk's determination.